

Montana Department of
Public Health & Human Services

Section:

**Overview – Best Beginnings Child Care
Scholarships**

CHILD CARE

Subject:

Confidentiality

Supersedes: Child Care 1-7 (5/01/05)

References: 37-80-103 ARM
MCA 41-3-201, 41-3-205
Montana Constitution, Art II, Sections 9 & 10

General Rule The Department of Public Health & Human Services (DPHHS) and its contractors may share client information for purposes directly connected with the administration of the public assistance programs with other federal programs and certain entitled entities. Confidential information concerning the applicant or participant, without notice to or permission of the individual, may be provided and used for the following purposes:

- ☐ Reporting child abuse and neglect to the appropriate authority (MCA 41-3-205);
- ☐ Conducting child support activities;
- ☐ Conducting child care licensing activities;
- ☐ Establishing eligibility and administering (including audits, investigations, prosecutions, etc.) federal programs or federally assisted programs, which provide assistance (cash, in-kind, or services) directly to individuals based on need.

Requests for information about current or past participants, which do not meet the above criteria must be submitted in writing to the ECSB:

Early Childhood Services Bureau
PO Box 202925
Helena, MT 59620-2925
444-2547 FAX

When there is a question about a breach of confidentiality, the Early Childhood Services Bureau will refer the request to the Office of Legal Affairs.

Montana Department of Public Health & Human Services CHILD CARE	Section: Overview – Best Beginnings Child Care Scholarships Subject: Confidentiality
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HIPAA Federal Health Insurance Portability & Accountability Act (HIPAA) Privacy Policy regulations were implemented by the Department and its contractors in April 2003. Child Care Resource and Referral agencies received training in HIPAA regulations and practices. CCR&Rs received HIPAA policy materials developed by the Department and the Early Childhood Services Bureau at that time.

As contractors CCR&Rs are subject to HIPAA confidentiality policies. This includes training current and new CCR&R personnel in HIPAA regulations and practices.

Subpoenas When a subpoena is served, the ECSB will refer the request to the Office of Legal Affairs. Send or FAX the subpoena to the Early Childhood Services Bureau.

Emergency Situations When information is needed to provide emergency medical care, the information must be released. As soon as possible thereafter, the applicant or participant must be notified of the release of information.

Reporting Child Abuse & Neglect, A Statutory Requirement MCA 41-3-201 [portions relevant to child care services]: When the professionals and officials listed in sub section 2 [below] know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the Department of Public Health and Human Services or its local affiliate [see "Where to Report . . ." below].

(2) Professional and officials required to report are:

(d) school teachers, other school officials and employees who work with children during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 [the CCR&R network] or of a child and adult food care program, or

Montana Department of
Public Health & Human Services

Section:

**Overview – Best Beginnings Child Care
Scholarships**

CHILD CARE

Subject:

Confidentiality

an operator or employee of a child care facility;

(j) an employee or owner of an entity that contracts with the department to provide direct services to children. [i.e. Legally Unregistered Provider]

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(5) The reports referred to under this section must contain:

- (a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;
- (b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;
- (c) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

MCA 41-3-203: Immunity from liability. (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting in judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

**Where to
Report Child
Abuse &
Neglect**

Child abuse and neglect may be reported in Montana by dialing the following toll free telephone number:

1-866-820-KIDS (5437)

If the child is in immediate danger,
call 911 or the local law enforcement agency.

Montana Department of
Public Health & Human Services

Section:

**Overview – Best Beginnings Child Care
Scholarships**

CHILD CARE

Subject:

Confidentiality

**Agency
Personnel**

Only qualified program employees who are restricted from disclosing confidential information shall conduct the required interviews.

NOTE: Non-program employees may conduct interviews or certify applicants when specifically allowed under federal regulation (e.g., federally declared disaster).

Contractors

Violation of Department policy confidentiality by a contractor may result in cancellation of that contract with the Department.

Through the contracting process, contractors agree to protect the confidentiality of any material and information concerning a participant provided under the auspices of the contract and are subject to the same confidentiality requirements as Department employees.

All materials and information, whether verbal, written, or otherwise provided to the contractor by the State or acquired by the contractor on behalf of the State will be regarded as confidential information.

Reasons for policy:

This policy is established to provide general information requirements regarding the safeguarding of participant information in all matters relating to the Department. The Department or its agents generally provides information which individuals request about themselves. This policy describes how individuals gain access to their own records as well as the procedures that the Department or its agents use to decide whether to release information about program participants upon request. Information that cannot be associated with an individual's identity is generally available for release to the public.

Volunteers

Volunteers or others who are not employed by DPHHS or its contractors may not determine eligibility. However, they may assist in related activities such as:

- ☐ Obtaining necessary information; and
- ☐ Helping applicants complete the application form.

Volunteers are restricted from disclosing confidential information.

<p>Montana Department of Public Health & Human Services</p> <p>CHILD CARE</p>	<p>Section:</p> <p>Overview – Best Beginnings Child Care Scholarships</p> <hr/> <p>Subject:</p> <p>Confidentiality</p>
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**CCR&R
Practices**

Child Care Resource and Referral agencies have the responsibility of maintaining confidentiality of family and provider information. Examples of maintaining confidentiality in the CCR&R setting include, but are not limited to, the following:

- ❑ The name or any identifying information is not available in a public location, of a family receiving service.
- ❑ The CCR&R maintains confidentiality when a non-custodial parent requests the location of their children, without approval from authorities.
- ❑ An applicant's or a participant's personal information remains confidential when a child care provider inquires about eligibility.
- ❑ The CCR&R maintains confidentiality when a provider seeks the location of a previous customer.

**Release to Child
Care Licensors
& Child and
Family Services
Investigators**

Child Care Resource and Referral agency staff and child care providers shall release information relevant to authorities participating in child care licensing or child protective services investigations.

**Release to Law
Enforcement**

Only the participant's address can be released to a federal, state or local law enforcement officer who presents a written request for information which includes the participant's name and specifies that the individual:

- ❑ is fleeing to avoid prosecution, custody or confinement for a felony, or;
- ❑ is violating a condition of parole or probation; or
- ❑ has information necessary for the officer to conduct official duties.

**Release to
Participant**

The applicant/participant may review all information, which was considered when making the eligibility determination in the case file. Privileged information, such as the name of individuals who have disclosed information about the household without the household's knowledge or the nature or status of pending criminal prosecution, may be withheld. The agency must also make

Montana Department of
Public Health & Human Services

Section:

**Overview – Best Beginnings Child Care
Scholarships**

CHILD CARE

Subject:

Confidentiality

available, without charge, the specific materials necessary for a household or its representative to determine whether a fair hearing should be requested or to prepare for a hearing.

**Release to
Others**

Case file information may be released in situations other than those already described only if the head of the household, the spouse or other person authorized by the household provides a written authorization to release information which includes:

- ☐ the date the authorization expires, and;
- ☐ the name of the person or agency to whom the information will be released, and;
- ☐ information which can be released:
 - itemizing specific items;
 - items dated within a certain time frame; or
 - general release.
- ☐ and, a dated signature of the authorizing individual.

**Authorization
to Release
Information
DPHHS-
HCS-101**

The Authorization to Release Information page of the child care application is used to assist the applicant/participant in obtaining information necessary to determine eligibility. It explains the client's rights to confidentiality and gives the participant/applicant the option of authorizing the release of information or declining to authorize the release of information.

EXAMPLE: An applicant has been working and is unable to provide verification of current income. The CCR&R Eligibility Specialist should use the signed Authorization to Release Information (DPHHS-HCS-101) form to contact the employer and obtain verification of income to assist the applicant.

The authorization expires one year from the date of signature, so must be completed at application and yearly thereafter. The participant/applicant always has the right to rescind the authorization in writing. Because one cannot waive another individual's right to confidentiality, each adult household

Montana Department of Public Health & Human Services CHILD CARE	Section: Overview – Best Beginnings Child Care Scholarships Subject: Confidentiality
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member should be given the opportunity to review and sign the Authorization to Release Information page of the application.

Refusal to Authorize Release on HCS/CC-101

Signing the Authorization to Release Information page of the application is not a condition of eligibility. However, if the participant/applicant does not wish to sign the form it should be case noted that they were given the opportunity, refused, and intend to provide eligibility related information without assistance.

Although a participant may not authorize a release of information, the CCR&R may contact the caseworker, who determines eligibility, when serving the family's child care needs in support of TANF, CPS or Full Day/Full Year Head Start programs. The information shall be limited to a need-to-know basis regarding the child care schedule required for the family. Refer back to the general rule for this, as outlined in Section 1-7.

EXAMPLE: A TANF participant may be self-conscious about FIA/EP activities involving a drug rehabilitation program. CCR&R staff only need to know the hours of child care required by the family in order to set up a child care certification plan.

One Time Only Authorization to Release Information DPHHS-HCS-102

The One Time Only Authorization to Release Information (DPHHS-HCS-102) form is used for incident specific releases of information on a case-by-case basis. The participant/applicant should be very specific about what information they are authorizing for release. Not every participant/applicant would need to sign the form. The participant/applicant sets the amount of time for which the authorization is in effect and can rescind the authorization at any time in writing.

EXAMPLE: A CCR&R Eligibility Specialist may need to verify the extent of an individual's disability to determine the appropriate work requirement for the family. The participant could complete the One Time Only Authorization to Release Information (DPHHS-HCS-102) form and state the effective period.

Montana Department of
Public Health & Human Services

Section:

**Overview – Best Beginnings Child Care
Scholarships**

CHILD CARE

Subject:

Confidentiality

**Child Care
Providers**

Child Care Providers shall keep all information pertaining to the family confidential, except for the following circumstances:

- ❑ All child care providers are mandatory reporters for suspected child abuse or neglect. These concerns shall be reported to the Department's Child Protective Services Intake Unit.
- ❑ Child care providers shall share information with Department child care licensing personnel.
- ❑ The provider shall share attendance information with the Department or the CCR&R, with regard to the child care scholarship program.
- ❑ A provider may provide documentation indicating service to subsidized families to qualify for related ECSB programs:
 - Child and Adult Care Food Program
 - Best Beginnings Provider Grant Programs
 - Child Care Licensing/Registration Programs